



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Concentrated Animal Feeding Operations

LSA Document #09-213

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Description

Establishes new rules in 327 IAC 15-16 for concentrated animal feeding operations to comply with 33 U.S.C. 1342. Repeals the existing rules for concentrated animal feeding operations in 327 IAC 5-4-3; 327 IAC 5-4-3.1 and 327 IAC 15-15.

Citations Affected

327 IAC 5-4-3; 327 IAC 5-4-3.1; 327 IAC 15-15; 327 IAC 15-16.

Affected Persons

Agricultural producers that engage in beef and dairy cattle farming, hog and pig farming, chicken and chicken egg production, turkey and other poultry production, sheep farming and horse production (NAICS 2007 sector 112) and who meet the definition of a concentrated animal feeding operation (IC 13-11-2-38.3 and 40 CFR 122.23).

Reason(s) for the Rule

In 2008, the U.S. Environmental Protection Agency revised its rules for concentrated animal feeding operations in response to the decision of the 2nd Circuit Court of Appeals in *Waterkeeper Alliance, Inc. v. Environmental Protection Agency*, 399 F.3d 486 (2d Cir. 2005). In 2009, the Indiana General Assembly made significant changes to the laws for confined feeding operations in IC 13-18-10 (P.L. 127-2009). Those changes, combined with changes in the industry, require amendments to the rules for concentrated animal feeding operations.

Economic Impact of the Rule

Estimated annual non-federal cost of this rule is approximately \$0.

Benefits of the Rule

These changes will make Indiana's concentrated animal feeding operation rules consistent with current federal and state law and standards. These changes will ensure the continued protection of human health and the environment in the state of Indiana.

Description of the Rulemaking Project

Indiana has had concentrated animal feeding operation rules in place since 2002, concurrent with EPA's National Pollutant Discharge Elimination System (NPDES) program for CAFOs in 40 CFR 122. The federal CAFO rules were revised on November 20, 2008 in response to the *Waterkeeper* decision (73 FR 70418). This rule makes Indiana's CAFO rules consistent with the federal NPDES CAFO program. On March 15, 2011, the 5th Circuit Court of Appeals determined that NPDES permits were only required for CAFOs that discharge and cannot be required for CAFOs that "propose to discharge" as described in the 2008 federal rule. [40 CFR 122.23(d)] This rule eliminates the permit requirement for CAFOs that propose to discharge but do not in fact discharge, as well as the self-certification requirement for facilities that do not discharge or "propose to discharge".

This rulemaking is being done in conjunction with LSA Document #09-615 for confined feeding operations. LSA Document #09-615 is establishing a new 327 IAC 19 to comply with the current Indiana laws for CFOs at IC 13-18-10. IDEM is currently planning to have the same effective date for these two rules in order to ensure administrative consistency and, if applicable, a smooth transition from the NPDES permit program to a CFO approval.



In this draft rule, IDEM is proposing to upgrade the requirements for all CAFOs through a new rule at 327 IAC 15-16 that would replace existing rules that IDEM proposed to amend in the first notice of rulemaking published on August 19, 2009.

Public Notices

First Notice of Comment Period: April 8, 2009, Indiana Register (DIN: 20090408-IR-327090213FNA)

Second Notice of Comment Period: August 11, 2010, Indiana Register (DIN: 20100811-IR-327090213SNA)

Public Hearing Notice: August 11, 2010, Indiana Register (DIN: 20100811-IR-327090213PHA).

Change of Public Hearing Notice: October 20, 2010, Indiana Register (DIN: 20101020-IR-327090213CHA).

Scheduled Hearings

First Public Hearing: May 11, 2011.

Second Public Hearing: November 9, 2011.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

This rule is consistent with the federal regulations for confined feeding operations in 40 CFR 122.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Solid Waste Management Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/ hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with Legislative Services.

Additional Information

Additional information regarding technical aspects of this rulemaking action can be obtained from Mike Dunn, Permits Branch, Office of Land Quality, (317) 232-8736 or (800) 451-6027 (in Indiana).

Additional information regarding procedural aspects of this rulemaking action can be obtained from Steve Mojonnier, Rules Development Branch, Office of Legal Counsel, (317) 233-1655 or (800) 451-6027 (in Indiana).